

Billing Code 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018-AI59

**Fiscal Year 2003 Tribal Landowner Incentive Program; Request for Grant
Proposals and Final Policy and Implementation Guidelines**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of request for proposals; final policy, and implementation guidelines.

SUMMARY: We, the Fish and Wildlife Service (Service) are soliciting project proposals for Federal assistance under the Tribal Landowner Incentive Program (TLIP). This document describes how you can apply for funding under the TLIP and how we will determine which project proposals will be funded. The Department of the Interior and Related Agencies Appropriations Act of 2002 allocated \$39,740,000 from the Land and Water Conservation Fund for conservation grants to States, the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, the Northern Mariana Islands, American Samoa, and Tribes under a Landowner Incentive Program. This notice sets forth guidance for the dissemination of \$3,974,000 which is the amount designated for TLIP.

DATES: Project proposals must be received by the appropriate Regional Office (see Table 1 in ADDRESSES) no later than [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: For information regarding collection requirements, applicants should contact the Native American Liaison in the Service's Regional Office for the State in which the proposed project would occur. The contact information for each Regional Office is listed in Table 1 below. Information on the TLIP is also available from the U.S. Fish and Wildlife Service, Office of the Native American Liaison, 1849 C Street, NW, Mail Stop 3251, Washington, D.C. 20240, and electronically at <http://grants.fws.gov/tribal.html>.

Project proposals should be submitted to the Service's Regional Office for the State in which the proposed project would occur (see Table 1 under this section). You must submit one original and two copies of the complete proposal. We will not accept facsimile project proposals.

Table 1. Where to Send Project Proposals and List of Regional Contacts

| Service Region | States where the project will occur | Where to send your project proposal | Regional Native American Liaison and phone number |
|-----------------------|--|--|--|
| Region 1 | Hawaii, Idaho, Oregon, Washington, Nevada, and California | Regional Director U.S. Fish and Wildlife Service Eastside Federal Complex 911 N.E. 11 th Avenue Portland, OR 97232-4181 | Scott L. Aikin (503) 231-6123 |
| Region 2 | Arizona, New Mexico, Oklahoma, and Texas | Regional Director U.S. Fish and Wildlife Service 500 Gold Avenue, SW P.O. Box 1306 Albuquerque, NM 87103-1306 | John Antonio (505) 248-6810 |
| Region 3 | Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin | Regional Director U.S. Fish and Wildlife Service 1 Federal Drive Fort Snelling, MN 55111 | John Leonard (612) 713-5108 |
| Region 4 | Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee | Regional Director U.S. Fish and Wildlife Service 1875 Century Boulevard, Rm. 410 Atlanta, GA 30345 | James D. Brown (404) 679-7125 |
| Region 5 | Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia | Regional Director U.S. Fish and Wildlife Service 300 Westgate Center Drive Hadley, MA 01035-9589 | D.J. Monette (413) 253-8662 |
| Region 6 | Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming | Regional Director U.S. Fish and Wildlife Service PO Box 25486 Denver Federal Center Denver, CO 80225-0486 | David Redhorse (303) 236-7905 |
| Region 7 | Alaska | Regional Director U.S. Fish and Wildlife Service 1011 East Tudor Road Anchorage, AK 99503-6199 | Tony DeGange (907) 786-3492 |

FOR FURTHER INFORMATION CONTACT: For further information, contact the Native American Liaison in the appropriate Regional Office (see Table 1 under ADDRESSES) or Patrick Durham, Office of the Native American Liaison, U.S. Fish and Wildlife Service, 1849 C Street, Mail Stop 3012 MIB, Washington, DC 20240, 202/208-4133.

SUPPLEMENTARY INFORMATION:

I. REQUEST FOR PROPOSALS: The Service invites submission of grant proposals from federally recognized Indian tribal governments (including Alaska Native Villages) for the protection and management of habitat to benefit federally listed, proposed, or candidate species, or other at-risk species. This program supports the efforts of tribal governments in programs that develop or augment the capacity to manage, conserve, or protect fish and wildlife species of concern through the provision of funding and technical support.

II. DEFINITIONS: The following definitions apply:

1. *At-Risk Species* — Any plant or animal species recognized as a species of conservation concern, such as species listed or identified by a State or a tribe.

2. *Biological Opinion* — Any document that includes: (1) the opinion of the Fish and Wildlife Service or the National Marine Fisheries Service as to whether or not a Federal action is likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of designated critical habitat; (2) a summary of the information on which the opinion is based; and (3) a detailed discussion of the effects of the action on listed species or designated critical habitat under the provisions of the Endangered Species Act.

3. *Candidate Species* — Plant and animal taxa considered for possible addition to the List of Endangered and Threatened Species.

4. *Conservation Recommendation* — The Fish and Wildlife Service's non-binding suggestions resulting from formal or informal consultation, under the Endangered Species Act, that: (1) identify discretionary measures a Federal agency can take to minimize or avoid the adverse effects of a proposed action on listed or candidate species, or designated critical habitat; (2) identify studies, monitoring, or research to develop new information on listed or candidate species, or designated critical habitat; and (3) include suggestions on how an agency can assist species conservation as part of their action and in furtherance of its authorities under Section 7(a)(1) of the Endangered Species Act.

5. *Habitat* — The area that provides direct support for a given species, population, or community. It includes all environmental features that comprise an area such as air quality, water quality, vegetation and soil characteristics, and water supply.

6. *Listed Species* — Any species of fish, wildlife, or plant that has been determined to be endangered or threatened under Section 4 of the Endangered Species Act.

7. *Mitigation* — Activities carried out under National Environmental Policy Act regulations, for the purpose of moderating, reducing, or alleviating the impacts of a proposed activity, including (a) avoiding the impact by not taking a certain action; (b) minimizing impacts by limiting the degree or magnitude of the action; (c) rectifying the

impact by repairing, rehabilitating, or restoring the affected environment; (d) reducing or eliminating the impact over time by undertaking preservation and maintenance operations during the life of the action; and (e) compensating for the impact by replacing or providing substitute resources or environments.

8. *Proposed Species* — Any species of fish, wildlife, or plant that is proposed in the *Federal Register* to be listed under Section 4 of the Endangered Species Act.

9. *Tribal Lands* — Lands held by the United States in trust for a tribe or an individual Indian; or lands legally owned in fee simple by a tribe or an individual Indian that are subject to Federal restrictions against alienation or encumbrance. Also lands for which a tribe or an individual Indian retained specific right-of-way or uses as defined by treaty or other binding agreement (including Alaska Native Corporation lands).

III. BACKGROUND: The Department of the Interior and Related Agencies Appropriations Act of 2002 allocated \$39,740,000 from the Land and Water Conservation Fund for conservation grants to States, the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, the Northern Mariana Islands, American Samoa, and Tribes under the Landowner Incentive Program. The Service herein provides the implementation guidance for the tribal component of the program.

In recent years, natural resource managers have increasingly recognized that private lands play a pivotal role in linking or providing important habitats for fish, wildlife, and plant species. To protect and enhance these habitats through incentives for private landowners, Congress appropriated \$39,740,000 for the Service to administer a new Landowner Incentive Program (LIP) for States and tribes. The Service will award grants for actions and activities that protect and restore habitats that benefit federally listed, proposed, or candidate species, or other at-risk species on private lands. A primary objective of LIP is to establish, or supplement existing, landowner incentive programs that provide technical and financial assistance, including habitat protection and restoration, to private landowners for the protection and management of habitat to benefit federally listed, proposed, or candidate species, or other at-risk species on private lands as stated in the appropriations language. LIP complements other Federal private lands conservation programs that focus on conservation of habitat.

The Service is providing guidance to the public and, particularly, to federally recognized tribes, in the administration of the \$3,974,000 allocated for TLIP. This program will provide conservation monies to federally recognized tribes for actions and activities that protect and restore habitats that benefit federally listed, proposed, or candidate species, or other at-risk species on tribal lands. TLIP was created because of the unique relationship between the Federal Government and tribes and because tribal lands are not private lands and would not be eligible for funding under a State-administered LIP with a private lands grant distribution system. Because the tribes directly administer the funds rather than distribute them further to individual landowners, the criteria used in evaluating program proposals differ to some extent from those used in the LIP. The results of both the LIP and TLIP would be similar in effect, because both encourage voluntary conservation of natural resources. A series of questions and answers follows and describes the guidelines in some detail.

IV. IMPLEMENTATION GUIDELINES

A. Eligibility.

1. Who may participate in the TLIP?

Federally recognized tribes in all parts of the United States, including: federally recognized tribes, pueblos, rancherias, and Alaska native villages or traditional councils as defined by the Alaska Native Claims Settlement Act.

2. Are State-recognized tribes or petitioning tribes eligible to receive grants under this program?

No. Only federally recognized tribes are eligible to receive grants under this program. Federally recognized tribes are listed in the Federal Register (67 FR 46238; July 12, 2002).

3. Can tribal organizations or other entities (including individual Indian allottees) receive grants under this program?

No. However, organizations or entities may participate as subgrantees or contractors to federally recognized tribes.

4. What process will the Service use to solicit and receive proposals for funding?

The Service will request proposals through a Federal Register notice, direct contact, and other forms of outreach to eligible applicants. The Service's Regional Directors will receive all proposals.

5. Who will coordinate the scoring of grant application submissions?

The Regional Native American Liaisons of the Service will coordinate the process to screen proposals to ensure that they are complete and to score them according to nationally uniform criteria. Tribes are encouraged to contact the Native American Liaison in the appropriate Regional Office identified in Table 1 under ADDRESSES for additional assistance in submitting proposals.

6. How will the various grant application submissions be reviewed for funding?

A national panel will review regionally ranked proposals for recommendations to the Director of the Service (Director).

7. Who will serve as the national review panel?

The Regional Native American Liaisons will serve on the panel in addition to other Service and other Federal agency personnel, as appropriate, and as may be identified by the Director.

8. Will tribal representatives be involved in reviewing or ranking proposals?

No, only Federal employees will review and rank proposals in this initial year.

9. Who will make the final determination for grant approval?

The Director will make the final determination for grant award.

10. How will the tribes be notified whether or not they have been awarded grants?

Applicants will be notified by the Director through the Regional Native American Liaison as to whether or not they have been awarded grants.

B. Application Requirements.

1. Is TLIP exempt from Federal grant program compliance?

No, the TLIP program must comply with all Federal grant program compliance requirements as specified in 43 CFR part 12; OMB Circulars A-133, A-102, and A-87; and Service Manual Chapters 522 FW1 and 523 FW1, except where specifically

exempted. Tribal grantees are responsible for ensuring that subgrantees and contractors adhere to these requirements.

2. What must proposals include for participation in TLIP?

Proposals must include a cover letter, program summary, program narrative, budget narrative, a completed Standard Form 424 Application for Federal Assistance (SF-424), and tribal resolution of support as described herein.

— *A cover letter* briefly states the main features of the proposed program.

— *A program summary* describes, in one-half page, the type of activity that would take place if the Service funds the proposal.

— *A program narrative* clearly identifies the problems that the proposal will correct or help solve for the protection and management of habitat to benefit federally listed, proposed, or candidate species, or other at-risk species on tribal lands, and the expected results or benefits. It must contain a needs assessment, objectives, timeline, methodology, geographic location (with maps), monitoring plan, and identification of clear, obtainable, and quantifiable goals and performance measures that will help achieve the management goals and objectives of the TLIP and relevant Service and tribal performance goals. The relevant Service goals are Goal 1 Sustainability of Fish and Wildlife Populations, including Migratory Bird Conservation (Goal 1.1), Imperiled Species (Goal 1.2), Interjurisdictional Fish (Goal 1.3), Marine Mammal Management (Goal 1.4), Species of International Concern (Goal 1.5), and Invasive Species (Goal 1.6); Goal 2, Habitat Conservation including; Habitat Conservation off Service Lands (Goal 2.3); and Mission Goal 4, Partnerships in Natural Resources, including Tribal Governments (Goal 4.1) all of which can be found in the Service's Long-Term Strategic Plan for 2000 to 2005 at <http://planning.fws.gov/USFWStrategicPlanv3.pdf>. Related Service planning and results can be found at <http://planning.fws.gov/>.

— *A budget narrative* clearly justifies all proposed costs and indicates that the grantee will provide adequate management systems for fiscal and contractual accountability, including annual monitoring and evaluation of progress toward desired project objectives, goals, and performance measures. It should include discussion of direct cost items such as salaries, equipment, consultant services, subcontracts, and travel, as well as program matching or cost sharing information. If some partners will provide in-kind matching, they must be listed in the grant proposal with a letter of commitment from each. Applicants may cover new project administrative costs and the Tribal Indirect Cost Rate, but they cannot include pre-existing administrative costs.

— *An SF-424 form* will be included with the Grant Application Package and is available on the internet at <http://training.fws.gov/fedaid/toolkit/sf424-f.pdf>.

— *A resolution of support* from the appropriate tribal governing body or from an individual with delegated tribal authority stating support for the proposal. If a resolution of support is not submitted with the proposal, one will be required prior to awarding the grant.

3. Where can applicants obtain a grant proposal package?

Applicants can obtain a grant proposal package from the Native American Liaison in the appropriate Regional Office (see Table 1 under ADDRESSES) or at the Service's Grants website <http://grants.fws.gov/tribal.html>.

4. Are matching funds required?

Yes, the Service requires a minimum of 25 percent non-Federal matching funds for participation in this program. This is the same matching contribution requirement States must make under the LIP.

5. Are in-kind contributions eligible as matching funds?

Yes, in-kind contributions provided by the tribe or a third party may be counted towards the required 25 percent non-federal matching requirement. Any in-kind contributions in excess of the required 25 percent may be used as a match to improve the potential ranking of a proposal. The Federal Government has defined “in-kind” as non-cash contributions made by the tribe. In-kind contributions must be necessary and reasonable for carrying out the project, and must represent the same value that the Service would have paid for similar services or property if purchased on the open market. Allowable in-kind contributions are defined in 43 CFR part 12.64. Additional information can be found at <http://training.fws.gov/fedaid/toolkit/inkind.pdf>.

6. Can a tribe submit more than one grant proposal?

Tribes are encouraged to submit a single comprehensive grant proposal but multiple proposals are allowable.

7. What maximum level of project funding will be considered under TLIP?

The Service will award grants up to a maximum of \$200,000. If more than one proposal is submitted by any one tribe, no more than \$200,000 total can be awarded to that tribe. This amount is approximately 5 percent of the annual appropriation, and it allows for grants that are large enough to make a significant impact and be widely distributed.

8. What minimum level of project funding will be considered under TLIP?

There is no proposal or grant award minimum, but the Service is concerned that an excess number of small grants could result in an undue administrative burden.

C. Ranking Criteria.

What ranking criteria will the Service use?

The Service will score proposals based on the following criteria: the Proposed Guidelines we assigned (67 FR 79131; December 27, 2002), specific point values to these criteria for the purpose of gaining public comment. Based on public comments and our understanding of Congressional intent in creating this program, the following criteria were assigned relative values from 1 (lowest) to 5 (highest).

Benefit: What are the probable significant outcomes to protect and restore habitats that benefit federally listed, proposed, or candidate species, or other at-risk species on tribal lands if this program is successfully completed? The Service requires that the tribe articulate how the benefits of its proposal support the goals and objectives of the TLIP and Service and tribal Performance Goals in its proposal narratives. Relative Value: 5.

Performance Measures: To what extent does the proposal provide obtainable and quantifiable performance measures and means to monitor, evaluate, and report on these measures compared to an initial baseline? The measures should be specific and clear and should provide demonstrable benefits to the target species of the action. These actions must support the goals and objectives of the TLIP, the Service, and the tribe. Relative Value: 4.

Work Plan: Are the program activities and objectives well-designed and achievable? Relative Value: 3.

Budget: Are all major budget items justified in relation to the program objectives and clearly explained in the narrative description? Relative Value: 3.

Capacity Building: To what extent does the program increase the grantee's capacity to implement actions and activities that protect and restore habitats that benefit federally listed, proposed, or candidate species, or other at-risk species on tribal lands? Relative Value: 3.

Contributions and Partnerships: To what extent does the applicant display commitment to the project proposal through in-kind contribution or matching funds and to what extent does it incorporate contributions from other non-Federal partners in the form of either cash or in-kind services? Relative Value: 3.

D. TLIP Operations and Management

1. Can grantees use TLIP funds to cover costs of environmental review, habitat evaluation, permit review (e.g., Section 404), and other environmental compliance activities associated with a TLIP project or program?

Yes, the TLIP funds can cover these activities, provided they are directly related to the TLIP project or program being funded and are included in the budget and discussed in the program and budget narratives.

2. What activities are eligible under TLIP?

Eligible programs include those that improve, preserve, or maintain habitat for endangered, threatened, candidate, or other at-risk species. Examples of the types of projects within identified tribal programs that the Service may fund include using prescribed burning to restore grasslands that support imperiled species, fencing to exclude animals from sensitive habitats, or planting native vegetation to restore degraded habitat. Tribes may implement TLIP projects on a variety of lands, including reservations, individual allotments, fee-lands, and village corporation and regional corporation lands in Alaska. Only activities that result in the protection and management of habitat that benefit listed, proposed, candidate, or other at-risk species are eligible for funding.

3. Are any specific activities not allowable under the guidance of TLIP?

A proposal cannot include activities required to comply with a Biological Opinion under the Endangered Species Act or include activities required to comply with a permit (e.g., mitigation responsibilities). However, a proposal can include activities that implement conservation recommendations or to cover the costs of environmental review, habitat evaluation, permit review, and other environmental compliance activities that are required because of the TLIP project, provided they are included in the budget and discussed in the Program and Budget Narratives. Research projects or archeological projects are not eligible.

4. What species are considered endangered, threatened, candidate, or at-risk?

Those species federally listed as endangered or threatened under the Endangered Species Act of 1973, as amended, or species proposed or candidates for such listing, or at-risk species (e.g., species recognized as a species of conservation concern, such as species listed or identified by a State or a tribe).

5. Does the term “private lands” in the Landowner Incentive Program appropriation language exclude tribal trust lands from participation in TLIP?

No, tribal trust lands are not “public lands.” For the purposes of inclusion under TLIP, federally recognized tribes are considered landowners and are eligible.

6. Is the TLIP program a continuous revenue source for tribal wildlife programs?

No, there is no authorization for appropriation of funds beyond FY 2003. Funds appropriated in FY 2003 are available until spent.

7. Can the grantee hold TLIP funds in an interest-bearing account?

Funds can be held in an interest-bearing account, although any interest earned in excess of \$100 must be returned to the fiscally responsible Federal agency (43 CFR Part 12.64).

E. Grant Award Procedures

1. What additional information must be provided to the Service by the grantees once awards are announced?

Once the Director notifies grantees that their proposal was selected for funding, the recipient must submit a grant agreement and attachments as required by Federal regulations. As with our other Federal programs, TLIP agreements must comply with 43 CFR part 12, the National Environmental Policy Act, Section 7 of the Endangered Species Act, the National Historic Preservation Act, and all other applicable Federal laws and regulations. This grant program is also subject to provisions of Office of Management and Budget Circulars No. A-87, A-102, and A-133 (see www.whitehouse.gov/omb/circulars).

2. Once grants are awarded, who should the grantee consider as the lead contact person?

Once grants have been awarded, the grantee should consider the appropriate Regional Native American Liaison as the lead contact person for all matters pertaining to the particular award. Financial matters will be delegated to the Division of Federal Aid through the Native American Liaison.

3. When will the Service award TLIP grants?

Once the Service has reviewed and ranked all eligible TLIP grant proposals, the Director will make his final decision within 30 days of receiving the recommendations of the national review panel.

4. How will funds be disbursed once the Service has awarded TLIP grants?

Subsequent to funding approval, grant funds are electronically provided through the Department of Health and Human Services’ SMARTLINK payment management system. Through this electronic funds transfer (EFT), grantees will be able to receive funds as needed. Some of the tribal grantees may not be EFT compliant. In order for us to ensure optimal service to potential grantees within the current Federal Aid process, grantees will need to obtain EFT capabilities compatible with the SMARTLINK payment management system. Grantees may request an advance of no more than 25 percent of the total grant if the advance is documented in the grant agreement.

5. What reporting requirements must tribes meet once funds are obligated under a TLIP grant agreement?

Quarterly Financial Status Reports (SF-272) which can be found at <http://www.whitehouse.gov/omb/grants/sf272.pdf>, must be submitted electronically. A

final Financial Status Report (SF-269) which can be found at <http://www.whitehouse.gov/omb/grants/sf269.pdf>, will be due to the Regional Office within 90 days of the grant agreement ending date. An annual performance report — including a list of project accomplishments relative to those which were planned in the grant agreement — will also be required within 90 days of the end of each 12-month period. The effectiveness of each tribe's program, as reported in the annual performance reports, will be an important factor considered during the grant award selection process in subsequent years.

6. Is there a limitation on the amount of funds that may be used for administrative costs?

Yes, no more than 12 percent of program funds can be used for staff and related administrative costs. If more than 12 percent is necessary to properly and efficiently operate the program, a waiver of this limitation may be provided by the Regional Director based on a written justification explaining why such a waiver is necessary.

V. PROCEDURAL REQUIREMENTS

A. Regulatory Planning and Review (Executive Order 12866)

This policy document identifies proposed eligibility criteria and selection factors that may be used to award grants under TLIP. The Service developed this policy to ensure consistent and adequate evaluation of grant proposals that are voluntarily submitted and to help prospective applicants understand how the Service will award grants. According to Executive Order 12866, this policy document is significant and has been reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below.

1. TLIP will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State or local communities. The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year (FY) 2002 allowed the Secretary to create TLIP. In addition, grants that are funded will generate other, secondary benefits, including benefits to natural systems (e.g., air, water) and local economies. All of these benefits are widely distributed and are not likely to be significant in any single location. It is likely that some residents where projects are initiated will experience some level of benefit, but quantifying these effects at this time is not possible. We do not expect the sum of all the benefits from this program, however, to have an annual effect on the economy of \$100 million or more.

2. We do not believe the TLIP would create inconsistencies with other agencies' actions. Congress has given the Service the responsibility to administer this program.

3. As a new grant program, the TLIP would not materially alter the budgetary impact of entitlements, user fees, loan programs, or the rights and obligations of their recipients. This policy document establishes a new grant program, authorized by Pub. L. 107-63, which should make greater resources available to applicants. The submission of grant proposals is completely voluntary, but necessary to receive benefits. When an applicant decides to submit a grant proposal, the proposed eligibility criteria and selection factors identified in this policy can be construed as requirements placed on the awarding of the grants. Additionally, we will place further requirements on grantees who are selected to receive funding under the TLIP program in order to obtain and retain the

benefit they are seeking. These requirements include specific Federal financial management and reporting requirements as well as specific habitat improvements or other management activities described in the applicant's grant proposal.

4. OMB has determined that this policy raises novel legal or policy issues, and, as a result, this document has undergone OMB review.

B. Regulatory Flexibility Act (5 U.S.C. 601 et seq.) Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, as amended, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (e.g., small businesses, small organizations, and small government jurisdictions). Indian tribes are not considered to be small entities for purposes of the Act and, consequently, no regulatory flexibility analysis has been done.

C. Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996

This implementation guidance is not considered a major rule under the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 804(2)) because it does not have an annual effect on the economy of \$100 million or more. The yearly amount of TLIP program funds is limited to \$3,974,000.

This implementation guidance will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Actions under this implementation guidance will distribute Federal funds to Indian tribal governments and tribal entities for purposes consistent with activities similar to other Service programs designed to enable landowners to protect and conserve species as may be protected under the Endangered Species Act and the habitat that supports such species.

This implementation guidance does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This implementation guidance would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995, 109 Stat. 48). This guidance will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (2 U.S.C. 1532).

E. Takings Implication Assessment (Executive Order 12630)

This implementation guidance does not have significant "takings" implications. This implementation guidance does not pertain to "taking" of private property interests, and its impact on private property would be an incentive that is totally landowner driven.

F. Executive Order 13211 - Energy Effects

On May 18, 2001, the President issued Executive Order 13211, which speaks to regulations that significantly affect energy supply, distribution, and use. The Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This implementation guidance is not expected to significantly affect energy supplies, distribution, or use. Therefore, no Statement of Energy Effects has been prepared.

G. Executive Order 13132 - Federalism

This implementation guidance does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of States.

H. Civil Justice Reform (Executive Order 12988)

This implementation guidance does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of the Executive Order 12988.

I. National Environmental Policy Act (NEPA)

This implementation guidance does not constitute a Federal action significantly affecting the quality of the human environment. The Service has determined that the issuance of the implementation guidance is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1, and 516 DM 6, Appendix 1. The Service will be responsible for ensuring that grants funded through TLIP are in compliance with NEPA.

J. Consultation and Coordination with Indian Tribal Governments (Executive Order 13175)

Pursuant to Executive Order 13175 of November 6, 2000, "Consultation and Coordination with Indian Tribal Governments," we have committed to consulting with tribal representatives in the finalization of the implementation guidance for the TLIP. We have evaluated any potential effects on federally recognized Indian tribes and have determined that there are no potential adverse effects. This guidance expands tribal participation in Service programs and allows for opportunities for tribal wildlife management and conservation initiatives across Indian Country. We will continue to consult with tribal governments and tribal entities as a part of the policymaking process, and beyond in furthering our mutual goals for the TLIP.

K. Paperwork Reduction Act (44 U.S.C. 3501)

The information collection requirements of this program will be largely met through the Federal Aid Grants Application Booklet. Federal Aid has OMB approval for this information collection under Control Number 1018-1019. This approval applies to grants managed by the Division of Federal Aid, even if these grants are for other Divisions of the Service. We are collecting this information relevant to the eligibility, substantiality, relative value, and budget information from applicants in order to make awards of grants under these programs. We are collecting financial and performance information to track costs and accomplishments of these grant programs. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VI. SUMMARY OF COMMENTS AND RECOMMENDATIONS

On December 27, 2002, the Fish and Wildlife Service (Service) published the proposed guidelines for the Tribal Wildlife Grant program (TLIP) with an open comment period of 1 month (67 FR 79133). On January 27, 2003, the Service had received a total of 41 comment submissions. Thirty tribes, 4 tribal organizations, 2 private enterprises, 1 organization, and 4 Federal entities provided suggestions for these proposed guidelines. These comments are addressed below.

In **part I., Background**, we asked several questions of particular concern to the Service regarding a limit on the amount of funding to be made available to any one tribe, our adherence to Congressional intent in the proposed guidelines, and what type of entities were eligible to participate in the TLIP. The responses for comments are summarized in the corresponding sections below.

In **part II., Proposed Implementation Guidelines, section A., Eligibility (1-3)**, we proposed a competitive program in which only federally recognized tribes would be able to apply for funding, but stipulated that tribal organizations and other non-Federal entities may enter into grant agreements as contractors or subgrantees to federally recognized tribes. It was also proposed that non-federally recognized tribes be excluded from submitting proposals.

Seven comments specifically stated that only federally recognized tribes should be eligible to enter into grant agreements, with one asking that the term, “federally recognized tribe” be fully explained by incorporating the inclusion of federally recognized tribes; pueblos; rancherias; Alaska native villages or traditional councils as defined by the Alaska Native Claims Settlement Act; and tribal governing bodies as recognized by the Bureau of Indian Affairs (BIA), such as Indian Reorganization Act councils or tribal entities that have received Self Governance status under the Self Governance Act. No comments advocated for the inclusion of tribes that are not recognized by the Federal Government, although nine noted their agreement with their exclusion from participating in TLIP. Two comments advocated for the inclusion of individual Indian trust land allotment owners as eligible direct participants.

Five comments agreed that tribal organizations may participate as contractors or subgrantees but not as direct applicants to TLIP. Two stated that only federally recognized tribes should be eligible. Three comments advocated for the inclusion of consortia of federally recognized tribes as eligible participants in TLIP as direct applicants.

RESPONSE: Congress specified the TLIP is only for federally recognized Indian tribes, which includes Alaskan Native Villages, but Congress did not include tribal organizations or consortia. Tribal organizations, consortia, commissions, or other non-tribal entities are not directly eligible to receive grants, but may participate as subgrantees or contractors to federally recognized Indian tribes. Individual Indian allottees are not eligible grantees through TLIP but are encouraged to work with States and tribes as subgrantees or contractors.

In **part II., Proposed Implementation Guidelines, section A., Eligibility (4)**, it was proposed that the Service would request proposals through a Federal Register notice and other forms of outreach and that proposals be received by the respective Regional Directors. One comment suggested that proposals should be ranked and selected for approval at the Regional level, and two others simply agreed with the proposed system.

RESPONSE: The delivery of TLIP will be conducted by the Regional Native American Liaisons at the Regional level. The submission of proposals to the Regional Directors is consistent with the Regional delivery process. However, because this is a national program, the national review and screening of proposals is appropriate. The authority to make final decisions on proposals to be funded lies with the Director of the Service.

In *part II., Proposed Implementation Guidelines, section A., Eligibility (5-9)*, the Service proposed that the Native American Liaisons in each Regional Office coordinate the screening and ranking of project proposals on the basis of nationally uniform criteria. A national panel would then review the Regionally-ranked proposals for recommendation to the Director for selection. The proposed panels would be made up of Service and other Federal personnel. The Director will make the final proposal selections on the basis of these recommendations.

Four respondents noted their agreement with nationally uniform ranking criteria, and two favored regional ranking. Three advocated for a geographic or population based component to the selection of proposals.

RESPONSE: TLIP is a competitive program for federally recognized Indian tribes regardless of geographic, land, or population based components. All tribes are equally eligible to submit proposals. Therefore, the use of nationally uniform criteria is appropriate for ranking proposals at both the Regional and National levels.

The Service will screen and score proposals in the Regional Offices. A national panel will then make recommendations to the Director based on these outcomes.

The Service examined various possible formulas for selecting proposals based on land area and other factors but was unable to identify any formula that adequately considered the wide variability among tribes, including their land base, population, and distribution across the United States.

Of the comments received on the proposed makeup of the panel, 21 agreed and provided suggestions as to which other Service or other Federal personnel should be involved. One respondent stated that the Regional Native American Liaisons should act in an advisory capacity to the ranking team, and one stated that Regional Native American Liaisons should be excused from ranking Regional proposals. Fourteen submissions advocated for the inclusion of tribal representation in the ranking process; of these, two specifically identified the Native American Fish and Wildlife Society as an appropriate resource to serve this purpose.

RESPONSE: The Regional and National panels will consist of Service fish and wildlife professionals and other Federal agency personnel knowledgeable of Native American natural resource issues. The comments received will be considered in the selection of panel members. Regional Native American Liaisons will coordinate the screening and scoring of proposals and will act in an advisory capacity to the Regional panels. They will not participate in the actual screening or scoring of proposals. The Regional Native

American Liaisons will serve on the national review panel along with other Service personnel to make recommendations to the Director for selection.

TLIP Proposed Guidelines state that “the Director will make the final determination for grant approval.” Six respondents stated their agreement with this language. Three suggested that the national review team be capable of making the final decision on accepting proposals through consensus, and one stated that the Regional Native American Liaisons should rank and award proposals in their respective Regions. In addition to these comments, it was suggested that an appeal process should be included for proposals that are not selected.

RESPONSE: Because this is a nationally competitive program, the Secretary’s authority is delegated solely to the Director, who will review recommendations and make final selections. Proposals which are not selected will receive information to improve their chances of future selection.

Part II., Proposed Implementation Guidelines, section B., Application Requirements (1), states that TLIP is not exempt from any of the Federal grant program compliance requirements as specified in 43 CFR part 12, OMB Circulars A-102 and A-87, and Service Manual Chapters 522 FW1 and 523 FW1. Two comments addressed this issue, both in agreement, but one called for the inclusion of language that identified the tribe’s fiduciary responsibility over contractees.

RESPONSE: The language in the proposed notice will be amended to indicate Tribal grantees’ responsibility for ensuring that subgrantees and contractors adhere to these requirements.

In part II., Proposed Implementation Guidelines, section B., Application Requirements (2), general inclusions for proposals in the TLIP program are addressed. They include a Cover Letter, Program Summary, Program Narrative, Budget Narrative, and Resolution of Support. Two general comments on this section were received; one stated approval of the proposed components of the grant proposal, and another noted the necessity of keeping the process as simple as possible to alleviate the administrative burden on the applicant.

RESPONSE: Comments noted.

No comments were received on the requirement of a ***Cover Letter or Program Summary.***

Nine respondents commented on the requirement of a ***Program Narrative.*** Eight advocated for the inclusion and/or prioritization of tribal goals rather than “relevant Service Performance Goals.” Two asked that Service Goals, 1.4, 1.5, 1.6, and Mission Goal in Partnerships 4.1 be included, and one respondent stated that the Service should delete this criterion or incorporate tribal goals.

RESPONSE: TLIP funding is to establish, or supplement existing, landowner incentive programs that provide technical and financial assistance, including habitat protection and

restoration, to private landowners for the protection and management of habitat to benefit federally listed, proposed, or candidate species, or other at-risk species on private lands as stated in the appropriations language. The care and maintenance of the nation's fish and wildlife resources is dependent on cooperative efforts of partners. The Service's performance goals articulate the importance of tribal partnerships in Mission Goal 4.1 and the broad range of mutually beneficial resource accomplishments that can result from partnership actions. The final guidance has been modified to include Mission Goal 4.1 Tribal Partnerships, and resource-related goals, including 1.1; 1.2; 1.3; 1.4; 1.5 1.6 Sustainability of Fish and Wildlife Populations <http://planning.fws.gov/tableofcon.html>.

No comments were received on the material under the heading ***Budget Narrative***.

Seven comments were submitted regarding the requirement of a ***Resolution of Support*** from the appropriate tribal governing body that supports the proposed project. One expressly opposed this requirement. Six said that often it is not reasonable to expect a tribal governing body to meet during the open period for submitting grant proposals. Several comments proposed remedies that would allow for a letter of support from the "duly elected leader of the tribe" or the "tribal Chair or Councilperson."

RESPONSE: The requirement for a ***Resolution of Support*** is an assurance that the tribal governing body supports the proposed project and the actions necessary to realize the natural resource benefits identified in the proposal. The Service recognizes that there could be times when a tribal resolution of support for a proposal may not be logistically possible. The Service will amend the requirement to accept a letter or signed endorsement from an individual with delegated tribal authority. If a resolution of support is not submitted with the proposal, one will be required from the tribal governing body prior to the Service's awarding of the grant.

Part II., Proposed Implementation Guidelines, section B., Application Requirements (3), states that the proposal package will be made available through the Service's Regional Native American Liaisons. Two comments pointed out that they would like to be able to download the proposal package from the Internet and one comment noted support for the proposed process.

RESPONSE: The Service is required to provide access to application packages through as many sources as available. Therefore, application guidelines and packages for this grant program can be obtained through Regional Native American Liaisons as well as through the Service's Web site at <http://grants.fws.gov/tribal.html>.

Part II., Proposed Implementation Guidelines, section B., Application Requirements (4), states that matching funds are required in the amount of 25 percent derived from non-Federal sources. One respondent stated that tribal support is nonenforceable and could be used as a tool by applicants to unfairly weight their proposals (either unwittingly or intentionally) and that this criterion is not meaningful and should be waived. Fourteen comments asked that the Service eliminate or decrease matching funds requirement and cited the Service Policy on Waivers for tribal governments as justification for doing so.

One asked that we implement a provision to waive this criterion for tribes with demonstrated hardship, and three agreed with the 25 percent match.

RESPONSE: The Service has identified those costs that are considered allowable as in-kind contributions or matching funds in Service Manual 522 FW 1 and in 43 CFR 12.64. A grantee can provide materials, equipment, or other services as a noncash match for portions of the grantee's matching share. The value of land may be provided, including the land proposed for restoration, enhancement, or management as a non-cash match, provided that the land or associated costs are necessary and reasonable for completing the project. We will keep the match requirement to encourage partnerships and leverage funds whenever possible.

In part II., Proposed Implementation Guidelines, section B., Application

Requirements (5), the Service outlines the proposed allowance for in-kind contributions as meeting a matching funds requirement and provides additional information as to how it defines in-kind Contributions. One respondent agreed, and one disagreed, stating that doing so would add no value to a proposal. Three asked that funds derived from Pub. L. 93-638 be considered as allowable for matching funds, in accordance with established BIA protocol.

RESPONSE: The Service, recognizes the benefits of partnering with private, local, or State agencies, and wishes to encourage the efforts of those that do provide partnership opportunities for the benefit of fish and wildlife resources. Funds derived from Pub. L. 93-638 can be identified to meet the matching funds requirement.

In part II., Proposed Implementation Guidelines, section B., Application

Requirements (6), the Service indicated that tribes are encouraged to submit a single proposal but may submit additional proposals if all of the funds are not expended. Three comments agreed that one proposal is sufficient long as the tribe can bundle, several projects, with the understanding that portions may be rejected. One stated that a single proposal is a good target but should not exclude multiple proposals outright. Two advocated for multiple proposals and one asked the Service to definitively state whether one or multiple proposals are allowable. A final comment noted that one proposal is reasonable but should not preclude a tribe from participating if it is part of a consortium (if allowed) that has been awarded funds as a subgrantee or contractor.

RESPONSE: Tribes are encouraged to submit one proposal, but multiple proposals are allowable.

Part II., Proposed Implementation Guidelines, section B., Application Requirements (7

and 8), recommends no minimum and that a maximum of approximately 5 percent of available funds (\$200,000) be implemented. Depending upon the number of proposals submitted and the relative merit of each, some applicants may receive greater amounts. One recommendation stated that a \$5,000 minimum be placed on proposals to relieve administrative burden on the Service. Sixteen comments supported 5 percent as a nonbinding target but not as a strict cap. Other comments suggested a 1, 2 or 2.5 percent

or a \$75,000 cap on proposals. One comment advocated for a cap based on the land base of projects, but did not offer any further explanation. Three disagreed with the proposed 5 percent and advocated for no cap at all. It was also suggested that the Service state clearly if a limit is an actual cap or simply a target. Another agreed that a maximum needs to be established but offered no recommendation.

RESPONSE: The Service will award grants up to a maximum of \$200,000 per proposal with no more than \$200,000 total awarded to any one tribe. There is no proposal or grant award minimum but the Service is concerned that an excess number of small grants could result in an undue administrative burden.

Part II., Proposed Implementation Guidelines, section C., Ranking Criteria offers a proposed weighting system by which the Service can determine a relative score for proposals, including Benefit, Performance Measures, Work Plan, Budget, Capacity Building, Commitment, Partnerships, and Administrative Costs. One general comment on the Ranking Criteria was to make them as close as possible to those of the Service's Landowner Incentive Program (LIP). An additional comment asks that the Service better define what this program's priorities are.

RESPONSE: TLIP funds are handled differently from LIP funds because tribal lands are not predominantly private lands and because tribes are inherently different from States. Congress included tribes in the LIP program but did not provide further guidance in accounting for these inherent differences. TLIP accommodates these differences as necessary but is similar to LIP where possible. Ranking criteria will be more clearly defined in the TLIP guidance.

Regarding the **Benefit** of proposals, 13 comments advocated adding emphasis to this criterion. Two agreed, provided tribes are permitted to set their own goals and priorities to determine which species are to benefit. Two respondents stated that tribal priorities should take precedence over the Service's. One comment favored increasing the emphasis on federally listed endangered species (as identified in the Endangered Species Act), and another specifically suggested that no special preference be placed upon them. A final comment stated that preference should be given to tribes with Integrated Resource Management Plans or Natural Resource Management Plans.

RESPONSE: The cumulative maximum of 25 points for **Benefit** (0-25) and 20 points for **Performance Measures** (0-20) already places high value on the extent to which the project will benefit fish and wildlife resources. Together these criteria measure value or benefit, for a total score of 30 points. The Service agrees that benefits will be measured against tribal fish and wildlife goals. The Service requires that tribes articulate how their proposals help support the goals and objectives of the TLIP and Service Performance Goals in their proposal narratives.

By including “activities that protect and restore habitats that benefit federally listed, proposed, or candidate species, or other at-risk species” tribes are provided with discretion to implement projects that benefit species of conservation concern and species of cultural importance. Special emphasis will not be placed on federally listed endangered species as this is not the focus of this grant program.

Under the heading **Performance Measures**, five comments called for an emphasis to this criterion. Two suggested that the Service de-emphasize it. Three comments suggested that tribal goals be included, and three others called for the inclusion of Service Goals, 1.4, 1.5, 1.6, and Mission Goal in Partnerships 4.1.

RESPONSE: The Service believes that quantifiable performance measures are an important ranking criterion. This criterion is weighted adequately in the ranking process. Tribes are required to articulate how their proposals help support the goals and objectives of the TLIP and Service and tribal Performance Goals in their proposal narratives in the **Benefit** criterion.

Four comments suggested an added emphasis to the **Work Plan** criterion, and one supported the proposed emphasis on the **Budget** criterion.

RESPONSE: The Service believes these criteria are adequately emphasized in the ranking process.

Six respondents felt that emphasis should be added to the **Capacity Building** criterion, and one stated further that such projects should be favored in future funding periods. Two asked that the Service remove or de-emphasize this criterion, and two agreed with it as proposed.

RESPONSE: The Service believes that this criterion is adequately emphasized. Many tribes have limited capacity to develop and implement programs for the protection and management of habitat to benefit federally listed, proposed, or candidate species, or other at-risk species, and TLIP provides an excellent opportunity to increase their capacity. The Service believes that TLIP can enhance the capacity for all tribes to implement programs for the benefit of fish and wildlife, even tribes with relatively sophisticated fish and wildlife departments.

Under the heading **Commitment**, 17 respondents asked that the Service remove or de-emphasize this criterion, 1 agreed with it and 1 advocated for further emphasis. One final respondent suggested that if this match is a “requirement,” we should consider lessening the commitment or waiving it in cases of demonstrated hardship.

RESPONSE: The Service is sensitive to the concerns expressed by many of those commenting on the matching requirements for TLIP. However, Congress specifically requires that tribes make a commitment to their projects and provide a match for these funds in order to leverage Federal dollars. The Service specifically set a low match requirement (25 percent) relative to other Federal grant programs to address this. Many

grant programs now require a 100 percent match. In addition, the Service will accept a variety of forms of support from the tribes to meet the match requirement, including cash, in-kind support, equipment, and materials.

Eighteen comments on the ***Partnerships*** criterion ask that the Service remove or de-emphasize this criterion as proposed. One suggested that letters of support should be considered if funds for a match are not available, and one advocated for an allowance for “partnerships” that include non-Federal partners.

RESPONSE: Partnerships are an increasingly essential tool in the management of natural resources. The Service believes that tribes developing partnerships with other organizations to implement projects under TLIP should be rewarded in the proposal ranking process. The Service agrees that this criterion should be de-emphasized and has reduced the relative value of this criterion. Tribes are especially encouraged to partner with non-Federal entities in order to better leverage Federal dollars and provide greater benefit to Federal taxpayers. In the final guidance ***Partnerships*** and ***Commitment*** criteria have been combined into a to a new category, ***Contributions and Partnerships***.

Five comments asked that the Service remove or de-emphasize the proposed ***Administrative Costs*** criterion, and two agreed with this criterion as proposed. Four comments advocated for not considering the tribal indirect cost rate as administrative cost, and one suggested that the Service specify an allowable amount for indirect cost rates. One comment suggested a limit on allowable administrative costs. Nine comments advocated for making an allowance for staff or seasonal employees by removing the word “staff” from the proposed language. Two agreed with the proposed emphasis on Administrative Costs.

RESPONSE: ***Administrative Costs*** is eliminated from the ranking criteria. We have, however, limited the total amount of the grant that can be used for administrative costs to 12 percent unless a waiver is granted by the Regional Director.

Under ***Part II., Proposed Implementation Guidelines, section D., TLIP Operations and Management (1)***, proposes that TLIP funds can be used to cover the costs of environmental review, habitat evaluation, permit review, and other environmental compliance activities associated with a TLIP project, provided they are included in the budget and discussed in the Program and Budget Narratives. Two comments agreed with this language, and one asked that the allowable activities further specify that TLIP funds may be used to address the costs of adhering to tribal environmental compliance activities.

RESPONSE: The Service concurs and does not specify at what level of environmental compliance (Federal, State, tribal, etc.) TLIP funds can be used, so long as they are directly related to the TLIP project or program being funded and are included in the budget and discussed in the program and budget narratives.

Part II., Proposed Implementation Guidelines, section D., TLIP Operations and Management (2), broadly defines the activities that are eligible for funding under TLIP.

Three comments called for greater detail in definitions and explanation of the intent of TLIP and provided suggested language to better define tribal lands, wildlife, conservation, Tribal Fish and Game department or Tribal Fish and Wildlife department and wildlife restoration project. One other comment called for the allowance of research projects, and another advocated for the inclusion of archeological surveys by Tribal Historic Preservation Officers.

RESPONSE: Congress specified that TLIP grants are to be used to establish or supplement programs that provide technical and financial assistance, including habitat protection and restoration, to tribes for the protection and management of habitat to benefit federally listed, proposed, or candidate species, or other at-risk species on private lands. The Service believes that tribes may implement TLIP projects on a variety of lands in “Indian Country,” including reservations, individual allotments, fee-lands, and village corporation and regional corporation lands in Alaska. Only activities that result in the protection and management of habitat and benefit listed, proposed, candidate, or other at-risk species are eligible for funding. Research projects or archeological projects are not eligible.

Part II., Proposed Implementation Guidelines, section D., TLIP Operations and Management (3), defines which activities are not allowable under TLIP. It states that inclusion of activities required to comply with a Biological Opinion or activities required to comply with a permit (e.g., mitigation activities) is not allowable. However, a proposal can include activities that implement conservation recommendations. Two comments expressed concern that no TLIP funds should be diverted to any nontribal mandates, court directives, or Federal activities required to uphold the trust responsibility. One comment asked that “Biological Opinion” be further defined. Two comments advocated for allowing for mitigation costs associated with compliance activities related to the Endangered Species Act.

RESPONSE: All TLIP funds will be awarded to Tribes and will not be diverted to any nontribal mandates, court directives, or Federal activities required to uphold the trust responsibility.

The Service appreciates the proposed language but disagrees with the inclusion of “court directive and Federal agency mandate or directive” to excluded activities because it would place additional restrictions on tribal proposals. “Biological Opinion” refers to Biological Opinions with regard to the Endangered Species Act and this is clarified in the “Definitions” section.

Part II., Proposed Implementation Guidelines, section D., TLIP Operations and Management (4), defines what species are considered endangered, threatened, candidate or, at risk. Seven respondents asked that “species at risk” be further defined. One of these suggested that the Service define “species at risk” as any federally listed, proposed, candidate animal or plant species or other species of concern as determined by a tribe or a State and, further, that species classified as such should be identified in the proposal. One respondent asked that it should be made clear whether plant species are included.

RESPONSE: For the purposes of TLIP, the Service defines “species at risk” as any federally listed, proposed, candidate animal or plant species or other species of concern as determined by a tribe or a State and, further, that species classified as such should be identified in the proposal.

Part II., Proposed Implementation Guidelines, section D., TLIP Operations and Management (5), indicates that tribal trust lands are not public lands and that federally recognized tribes are, for the purposes of participation in TLIP, considered the “landowners.” Two comments stated that all tribal (land) interests be eligible for projects.

RESPONSE: TLIP project funds may be expended on all “Tribal Lands” as defined in Section II. Of this Notice.

Part II., Proposed Implementation Guidelines, section D., TLIP Operations and Management (6), states that TLIP is not a continuous revenue source. Two comments advocated for making the TLIP program a continuing source for funding.

RESPONSE: Because TLIP is an annual Congressional allocation, it is subject to further actions by Congress and cannot be considered a continuing source for funding.

Part II., Proposed Implementation Guidelines, section D., TLIP Operations and Management (7), states that TLIP funds cannot be held in an interest-bearing account. Two comments suggested otherwise.

RESPONSE: Federal law allows funds to be held in an interest-bearing account, although any interest earned on such funds in excess of \$100 must be returned to the fiscally responsible Federal agency (CFR 43 Part 12.64).

Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (1), defines what additional information must be included by the grantees once awards are announced. One comment supported the proposed language.

Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (2), states that the lead contact after award announcements should be the Native American Liaison in the grantee’s respective Region. One comment advocated for a contact in the Service’s Division of Federal Aid to be identified as the initial contact, and one comment agreed with the proposed language.

RESPONSE: The Native American Liaison will be the lead contact for technical implementation assistance, and the Division of Federal Aid will serve as the principal financial contact.

Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (3), states that the Service will award grants within 30 days of the recommendations provided by the national review panel. One comment suggested that a timeline be provided for

acceptance and selection of awards, and one comment simply agreed with the stipulated language.

RESPONSE: A timeline for acceptance and selection of awards is included in the Grant Application Package.

Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (4), states that funds will be disbursed, subsequent to funding approval, through the Department of Health and Human Services' SMARTLINK electronic funds transfer (EFT) system. And, that in the instance of demonstrated hardship or need, grantees may request up to 25 percent of the grant award.

One comment said that the Service's Division of Federal Aid be contacted for guidance on compliance with Cash Management Act regarding "Reimbursable" as stated in the complete text. Six comments stated that if the Service has the ability to allocate 25 percent of the project funds up front, given demonstrated hardship or need, then all grantees should be eligible without demonstrating hardship or need. Two comments advocated for increasing the initial draw down, one suggested 40 percent, and the other was nonspecific.

RESPONSE: The Service will advance up to 25 percent of the total award upon request by the grantee.

Three disagreed with the proposed reimbursable mechanism, saying it presents an undue burden on tribes, and asked to have access to funds quarterly or as a lump sum transfer at the onset of a project. Two comments asked if all tribes are EFT compliant, and one suggested that the Service explore a similar process for allocating funds through contracting as in Pub. L. 93-638.

RESPONSE: Further clarification of the proposed EFT is necessary to explain that funds will be "reimbursed" as needed, rather than upon receipt of proof of expenditure. We feel that this does not place a financial burden on the tribes. All Tribes are capable of EFT. Pub. L. 93-638 is a unique mechanism that transfers funds to a tribe for programs that are specifically established for a tribe because of its status as a tribe and enables the recipient tribe to allocate such funds to address other relevant needs and is therefore not consistent with Congressional intent to use such a device.

Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (5), addresses the reporting requirements tribes must meet once funds are obligated under a TLIP grant agreement. One comment suggested that language be included to indicate that tribes will be obligated to comply with NEPA, ESA, National Historic Preservation Act, and other relevant Acts. Another comment suggested that the benefits and outcomes of the TWG program be reported to Congress.

RESPONSE: TLIP projects are subject to legal requirements of Federal regulatory Acts in the context of established Federal/Tribal protocol.

RESPONSE: A summary of benefits and outcomes of the TWG program will be made available to interested Congressional representatives.

Part III., Procedural Requirements, sections A., Regulatory Planning and Review; B., Regulatory Flexibility Act; C., Small Business Regulatory Enforcement Fairness Act;

D., Unfunded Mandates Reform Act; E., Takings Implications Order; F., Energy Effects; G., Federalism; and H., Civil Justice Reform, received no comments, although two pertinent general comments suggested that a section be added to clarify how the Freedom of Information Act (FOIA) will apply to information submitted by tribes.

RESPONSE: The Service will work with the Tribes to ensure that sensitive information is protected.

Part III., Procedural Requirements, sections I., National Environmental Policy Act, drew one comment that asked the Service to better determine what is meant in the proposed guidelines by the phrase “Service will ensure that grants funded through the TLIP program are in compliance with NEPA.”

RESPONSE: A completed NEPA Checklist and appropriate environmental information will be required in the Grant Narrative from the grantee for review and concurrence by the Service.

Part III., Procedural Requirements, section J., Consultation and Coordination with Indian Tribal Governments, and K., Paperwork Reduction Act, were not commented on.

Part IV., Native American Liaisons for the Fish and Wildlife Service, was not commented upon.

General Comments: Several comments did not readily fit into the above categories. The Service has responded to these comments below.

1. Three comments asked that the Service distinguish between treaty and nontreaty rights.

RESPONSE: The Service recognizes that treaty rights involve unique responsibilities defining specific rights to treaty-recognized tribes and will work to address them where appropriate within the grant processes.

2. Two general comments stated that there should be no Service administrative cost associated with implementation of this program.

RESPONSE: There is no provision to fund the Service’s administrative costs incurred in the implementation of this program elsewhere. Therefore, 3 percent of the available funds may be used to cover these costs.

3. One comment suggested that the funds for FY 02 and FY 03 be lumped into one proposal period. This same comment recommends that the Service allow for multiyear projects.

RESPONSE: In the adoption of the Department of the Interior and Related Agencies Appropriations Act of 2003, FY 02 funds under the Landowner Incentive Program (including TLIP) were rescinded by Congress.

4. One respondent advocated for increasing the amount of available funds in TLIP, and three advocated for future funding.

RESPONSE: TLIP is a 10 percent internal earmark by the Service on the Landowner Incentive Program, which is a Congressional appropriation. The Service is committed under current funding conditions to continue to support the TLIP program.

5. One respondent asked that the Service define the role of public opinion in ranking/selection of proposals.

RESPONSE: The Service will work to address public comments with the intent of enhancing the administration of TLIP for the benefit of federally recognized tribes.

6. One comment suggested that the Service allow for proposals that combine TLIP and Tribal Wildlife Grant funds.

RESPONSE: The Service must administer each grant as directed by Congress, and each program differs to some degree, limiting our ability to establish identical criteria.

7. Two respondents stated that there should be no time limit on expenditure of funds.

RESPONSE: After appropriation, TLIP funds are available until expended. However, grant agreements will be written for an appropriate amount of time to complete the project. Grant agreement periods are negotiable, and funds must be expended within 90 days following the end date of the grant agreement.

8. Two respondents suggested that the Service require postmarks on proposals showing the due date.

RESPONSE: Proposals postmarked, hand-delivered or otherwise sent in by the due date will be accepted for the grant review process.

9. One comment advocated allowing funds to roll over into the next fiscal year.

RESPONSE: This is allowable under Service guidelines and is recognized as a necessary option for the success of project initiatives.

10. One comment suggested that the Service allow for an 8-week response period for the Request For Proposals (RFP).

RESPONSE: In order to address the need to expedite the selection and awarding of proposals, the Service has set the RFP period for the TLIP 45 days. The Service feels that this period is sufficient for tribes to prepare proposals.

11. One comment suggested that the Service allocate funds as quickly as possible after awards are made.

RESPONSE: It is the Service's intent to accomplish this task, and a timeline will be provided in the Grant Application Kit.

12. One comment suggested that the Service apply the same criteria to both TLIP and TWG.

RESPONSE: The Service must administer each grant as directed by Congressional appropriation language which differ to some degree for each grant, thus limiting our ability to establish identical criteria for the two grant processes.

H.Craig Manson
Assistant Secretary, Fish and Wildlife and Parks

Date